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THE BASIS OF CONSTRUCTIVE INTERNATIONALISM

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One of the most striking features of the great crisis in its history through which the civilized world is now passing is the complexity and variety of important issues which are at stake. But among the great issues the greatest is that of safeguarding the development of international rights. The war opened with the denial of a right which lies at the foundation of a stable international system,—the right of a nation to be heard before it is condemned to the punishment of war; the progress of the struggle has witnessed the deliberate violation of solemn international treaties and conventions.

Such a situation is a challenge to civilization. International law no longer offers any trustworthy security, and our immediate duty is to face the problem not of its superstructure but of its foundations. It is only too clear that until these foundations are better laid than they are at present, the particular rights even of neutrals are not safe.

With this end in view it will be well first of all to define what is the object of the international polity. For the conception of this polity, though it is yet very imperfect even in theory, is involved in the idea of international relationships, and is necessary to their proper development. The object of the international polity may be defined as, first, to secure the existence of the individual nation states, and to this end to determine their relations one to another. So long as society continues to consist of a number of sovereign states of very unequal strength without any collective or international control, so long will some of its members be in a position of insecurity from the strength of others. To examine the field of national rights, to adjust them one to another, and to prevent the outbreak of a condition of affairs, *viz.*, war, which restricts and may put an end to international relationships, is the first object of the international polity.

The second object of the international polity is to secure that, when war has broken out, international agreements regulating the conduct of war, in the interests alike of the peoples of belligerent and of neutral states, shall be maintained.

Thus far it may be said that the character of the international polity is simply protective or preventive. But that cannot remain its sole character. Just as in Aristotle's famous definition, the state comes into existence to make the life of the individual possible but continues to exist to make it good, so the international polity comes into existence to secure the life of the nation, but continues to exist to make nationality good—that is to realize its potential qualities for good. In other words, internationalism ultimately will realize progressive functions by doing for national states what they cannot as well do for themselves. It will seek to assist the mutual development and coöperation of states, and to realize that harmony of interests which should be the aim of their political life.

Over against this present disruption or interruption of internationalism, it should be remembered that the past fifteen years have seen a very remarkable advance in the development of international organization. This is not the place to trace the various ways in which such expression has been given to the spirit of internationalism. But it is an important evidence of the growing recognition of the need of the international polity. And the present world-shaking war, while it has brought into ruins the fabric built up by international law and understanding, may yet be found to have advanced the real cause of internationalism even more than the preceding years of peace. For it has demonstrated more plainly than a hundred conferences of peace could have done the weaknesses in the present position of international development and the need of rebuilding on firmer foundations.

I

Now what are the foundations which have to be examined? First of all, at the base of the whole structure is the question of sanction. It is not necessary here to draw attention to the difference in this respect between national and international law. That is well known to all students. But it will be useful to analyze briefly the nature and necessity of the sanction in international agreements.

It would show a lack of sense to fail to recognize the value of the moral influence as a sanction of international agreements. The moral influence, despite the events of the war, has been by no means a negligible factor, and the dishonoring of international agreements has brought on the transgressing parties a loss of sympathy and support which, though it cannot be measured in terms of men, munitions and money, has meant a very real cost. It has alienated the sympathy of neutrals, and it has awakened a burning sense of wrong in those who have directly suffered which has strengthened their resistance and given confidence of ultimate victory. No faith can rest on transgression, and faith is one of the elements of victory. There should be no room for doubt that the moral sanction is a real support to international agreements.

But more than the moral sanction is required. The moral sanction *should* find its expression in men, munitions and money. The punishment of wrong-doing, by economic restrictions and by armed resistance, is required to support the moral sanction. The economic boycott is a powerful weapon in the modern commercial and industrial world, and it should be a duty of those who are parties to international agreements to use this weapon against the transgressor and to inflict economic ostracism until expiation has been made. But the economic weapon, powerful as it is, and sufficient as it may be in many cases, is not always an adequate sanction. More direct methods are then necessary and recourse must be had to armed intervention by force. On the question of the relations of moral sanction and force there has been too often a confusion of thought. Force, it cannot be too plainly said, is in itself neither moral nor immoral. It is the use of force which is right or wrong. And there are occasions when, with the nation as with the individual, to fail to use force is to do wrong. There are sins of omission, and nations can be guilty as well as individuals. There is not one morality for individuals and another for nations. Where wrong is done it is a duty to stay the wrong-doer, by suasion if that can be, by force if suasion fails.

Therefore, behind international law there must be put the complete sanction of moral, economic and military pressure. Until such provision is made by international agreement to secure that transgression of the law shall be punished there can be no stable foundation of the international polity.

Let it be said, however, at once, so that this matter may be clear, that such a sanction does not necessarily involve an international military organization if by that is meant an international police or armed force. For reasons which need not be discussed here, it seems probable that it will be to the action of individual nations, controlling and determining their own military and naval forces, that the international polity must look for the support of its authority.

The first and for the present by far the most important question which has to be faced is, therefore, that of sanction, for the policy of "constructive internationalism" must be provided with an effective foundation of "sanction."

The second question is: what are the fundamental international rights for which the sanction exists? There has grown up a complex body of international rights and in examining the problem before us it is important to distinguish what are the fundamental rights which it is necessary to secure. The present war has enabled men to see this question more clearly, in that it has witnessed the denial and transgression of what we must postulate as the two fundamental international rights. First of all, there is the right of a nation to be heard before it is punished. Second, there is the right to the protection of established international law. If the right of a nation to be heard before it is condemned is denied, or if the international agreements upon which states have entered are set aside by the act of an individual state, then the basis of international political society is destroyed. Let us consider somewhat more fully this very important question, for as matters now stand we see that these foundations have been shaken.

The first and fundamental right which must be secured to each nation is that it shall not have war declared against it until the case for the defence has been heard by an international tribunal. Just as it may be said that, where the individual has not secured the right to have his case heard, there is no system of constitutional government, so, without this fundamental right of nations, there can be no secure development of the international polity. When one individual can take upon himself the execution of justice against another individual, or where the state condemns a man unheard, there is no liberty; so, as long as one nation can refuse to submit its dispute to public inquiry and can proceed without hindrance

to declare war against a weaker state, there can be no real international liberty. Fundamental as this right is, and wide as is the moral acceptance of it by states, nevertheless the fact remains that internationally the right of a nation to have its case heard before war is levied upon it has not yet been secured. The principle of "obligatory arbitration" has been accepted by the assembled nations at the Hague, but the actual treaties of arbitration, save in the case of a few states, reserve matters of "national honor, vital interests, and independence." There is no statutory obligation, if we may use this term, which binds nations to submit a dispute in a matter of "vital interest" to inquiry, much less to arbitration. Arbitration involves the acceptance of the judgment of the court, and on matters of the greatest concern sovereign states are not willing to surrender their independence of judgment and action. Arbitration makes too heavy a demand on the mutual confidence of nations. But the right to an inquiry before judgment is executed is something very different from arbitration. If an individual or a nation is condemned unheard, that is the very negation of liberty.

The second fundamental right of a nation is to receive the protection provided by the observance of international agreements. If in a society agreements are not kept, and if the breach of agreement is not punished, the basis of that society is destroyed. So also in the international sphere it is fundamental that agreements should be kept and that their breach should be punished. To admit the doctrine of national "necessity" as being above all and conditioning all international agreements is to destroy international security. This is a matter of principle on which there can be no compromise.

Such are the foundations of the system of international rights and of the international polity. What steps can be taken to secure these rights?

II

A great advance has been made within the past year by the action of the present government of the United States in ratifying with this country,¹ with France, and with several other states, treaties which provide for the establishment with each of these countries of a permanent international commission to which all disputes, where diplomacy has failed, shall be submitted. That

¹ November 10, 1914.

step marks a practical contribution to the building up of the international right of inquiry which cannot be too gratefully recognized. It is a limited step, but it is the first step, and it opens the way towards developments which may complete and secure by effective sanction the recognition of the first and fundamental right of a nation to have its case heard. Those who have studied the history of international arbitration will recognize the wisdom of not attempting too much at one time. These treaties have prepared the way, and if, as we hope, the method of procedure which they have initiated is adopted by other states, there will grow up a network of treaties which will greatly facilitate progress.

But it is no disparagement to the value of such treaties to say that they mark only a first step. They go far to strengthen the chances of peaceful settlement of disputes between particular nations, yet the right of a nation to have its case heard is not thereby adequately secured. There are nations which may not agree to such a procedure, and the agreement itself lacks the support of an adequate sanction. No doubt in many cases the sense of honor is such as will secure the strict observance of the treaty. But it is very desirable that there should be behind such treaties, if they are to be extended into an effective security of the right of inquiry, the sense of a definite and visible sanction. What then is the next step?

Three years ago in a speech of March 13, 1911, in the House of Commons, Sir Edward Grey said, in speaking of the possibility of an unreserved treaty of arbitration between the United States and England:

It is true that the two nations who did that (*i.e.* enter upon an unreserved agreement) might still be exposed to attack from a third nation who had not entered into such an agreement. I think it would probably lead to their following it up by an agreement that they would join with each other in any case in which one only had a quarrel with a third power by which arbitration was refused.²

This is a noteworthy statement. It was made with regard to the right of arbitration, and not to the much lesser right of inquiry. It is well to observe, however, that such a step, postulating the system of separate treaties between single states, would involve a considerable extension of responsibility. To join with one other state against any third party is a *general* obligation, and the history

² Hansard, Vol. XXII.

of international development shows us that individual nations are averse to undertaking such wide risks as this provision against third parties may involve. A state if it were bound up by such an obligation might find itself involved in a dispute with some third state with which it had perfectly good relations. Furthermore, it will be seen that in such a step there is implied the idea of sanction expressed in the term of both states "joining" against a third party. It should, however, be kept in mind that all which is here being considered is the right of a state to an international hearing before force is used against it, and this is a right which civilized nations should be prepared to support.

But something more is desirable and should be attempted than can be satisfactorily provided by treaties between two individual states. Has not the time come when all states which recognize the fact that the right of inquiry is fundamental should unite together to assert this right and to declare that they will resist any power which refuses to submit its dispute to international inquiry before proceeding to war? By international inquiry, is not necessarily meant a court mainly representative of "other" nations. Where two states which have a matter in dispute agree upon a court of inquiry, that is sufficient. But just as in industrial matters where any two parties at dispute cannot agree upon an arbitrator the state should have the right to appoint, so, where two states cannot agree as to the court of inquiry, an international authority must have the right of instituting the court. What therefore seems to be clear is, that while it would mark a further advance if any two states, such as the United States and England, agree to support each other against any third party which refuses to submit its dispute to inquiry, it would be a still better and sounder method of advance if a general agreement were made between all states which are prepared, (a) to submit any dispute among themselves to inquiry, and (b) to support any member of this group against a third party who refuses inquiry before hostilities.

Such a general agreement should be open to all states which are prepared to enter upon it. But if it is to be effective it must have behind it a definite obligation on the part of the signatory states to support by the full weight of their resources, moral and material, the disregard or denial of this fundamental right. A union of states so constituted forms the best foundation for the develop-

ment of the international polity. It provides a system of mutual insurance. While one or two important nations must take the lead in such a policy, we venture to assert that it would win at once the loyal support of some at least of the great powers and of many of the smaller states. Indeed it may well be that all states would sooner or later agree to accept this position. It would be a union of a defensive character. It would not be formed against any state. If, however, any state or group of states refused to acknowledge such a right, the ground for the existence of such a union becomes all the more imperative. For it would reveal how futile and how dangerous the attempt would be to build up again an international system without securing the foundations.

If such an agreement then can be realized, time may bring mutual confidence between the nations and a respect for the judgments of the courts of inquiry, which will lead to the adoption of the principle of arbitration. But it may even be found that the system of inquiry and conciliation achieves the result which arbitration proposes to attain, and that it does so by methods which are much more acceptable to the nation states and may even avoid miscarriage of justice against which arbitration itself cannot offer any absolute security. For inquiry and conciliation is a much more elastic method than that of arbitration. In certain international disputes, on matters of a strictly juridical character, arbitration has shown itself to be the right and proper method. But in the wider and more difficult field of political relations, the method of inquiry and conciliation offers the soundest and safest line of progress.

There is then this broad foundation for constructive internationalism, namely, an agreement between states: (1) that they will recognize the obligation to submit all disputes between themselves and any other state to inquiry before declaring hostilities, and that they will support any state which recognizes this obligation against a state which threatens aggression and refuses to submit its claim to inquiry; (2) that they will respect and observe international agreements and conventions; and (3) that they will unite to protest against, and if protest is without effect, to punish by economic action or by armed intervention, the disregard of such conventions.

III

If we have seen aright what are the foundations of the international polity, it may be profitable to consider briefly some of the developments which it may be possible to build on such foundations. For it is only as a fuller vision of the international polity reveals itself to us that we can seize the importance of the whole question of international development. The right not to be condemned unheard is a very real gain especially to the weaker states. But arising out of it is a larger question which, even if the times are not yet ripe, it is none the less useful to state as a problem. The end or purpose of the international polity is to protect the rights of states and to develop friendly relationships and the spirit of mutual help. As then the object of international control and organization is to assist the proper development of nationality so it may come within the scope of international action to guarantee the right of independence which is the foundation of national existence. Already in the case of Belgium, and of certain other states, independence has been guaranteed by European treaties, and while at the present it may seem to many that such international guarantees have proved unavailing, it would be surely a grave mistake to think that the policy of neutralization has failed. Rightly seen, the doctrine of neutrality is a step in the direction of securing peace for small states holding what would otherwise be a very exposed position. This subject has been well expounded by Professor Charles de Visscher,³ who has pointed out how that these neutralized states have marked an advance in the international organization with a view to peace. Because such a step has not yet realized the desired results, it is no proof that the policy is wrong. On the contrary, a considerable extension of the policy of neutralization, provided it is supported by a sufficient sanction, is a definite step towards peace. But, as Professor de Visscher has pointed out, the guarantee of neutrality does not remove from the guaranteed state the obligation of preparing for its own self-defence, and one of the conditions which should accompany an extension of the policy of guaranteed independence is that the neutralized states should assist in the work of protecting, not only their own, but also the independence of all other states so guaranteed.

³ "The Neutrality of Belgium," *Political Quarterly*, Oxford, February, 1915.

This question at least deserves to be asked: should not the international organization undertake to guarantee the right of independence of small or weak states in a more definite way than has been hitherto done? No doubt it has been a principle in the foreign policy of the United Kingdom to support small states, and no less it can be said that the United States would look with intense distrust and indignation on the action of any powerful state which threatened the national existence of a small neighbor. But the time has come when it is important to see whether the right of nationality cannot be further strengthened and secured. Such a measure would certainly bring to any powerful and trusted group of states the friendship and support of the smaller states whose independence may be threatened. We have only to look at the history of the smaller states of Europe to see how important such a question is.

A second illustration will serve to indicate further the wide sphere of right on which sooner or later the international polity must enter. The study of the complex problems of European international relations has revealed more clearly than before the importance of what may be called the right of "economic access." It is evident that when the settlement of Europe after the war comes up for consideration one set of cases which will present no little difficulty is that of the possession of certain seaports which are of vital consequence to different and it may be rival nations. The ports, for example, of Danzig, Trieste, Salonica, and similarly, the control of Constantinople and the Dardanelles, illustrate the difficulties which arise. If there is to be an exclusive national possession of such strategic positions, unless rights of equal economic access are guaranteed to the nations which are excluded from these gateways of commerce, they will remain a permanent source of friction. So long as political interests impede natural developments, so long there will be unrest. Nations should have the right of free access to the world. No state should be allowed to penalize or differentiate against the produce of another nation which has to pass through its territory on the way to other markets. It is and should be within the rights of a sovereign state to determine the conditions on which the goods of any state may or may not enter its territory for consumption, but to prevent or even to penalize the goods of a state passing through its territory on the way to the

markets of the world is a matter which should be beyond the competence of any state. The simple expedient of transit in bond should be guaranteed by international agreement.

The security of the right of economic access will remove many particular causes of friction between nations, and it opens the way for far-reaching considerations. The function of the international polity is to secure that just rights are conceded and, while guaranteeing to nations their independence, to see that independence is not used to thwart the natural development of other states. If commercial rights of access are granted, the ground for political hostility is at least greatly minimized. But where a nation refuses coöperation and controls a potential access which it does not use, there is a natural grievance which sooner or later will prove to be a danger. It is in this respect that international control can come in to arbitrate between powers, to secure that there is the proper give and take, to distinguish between what can and cannot be fairly granted, and to seek to develop the mutual interests of states.

And there is a still wider problem connected with these economic rights. So long as there were fresh lands to occupy, the world was in a stage of development in which national rights of occupation were admitted. But we have reached the stage when all the available lands have been mapped out. Wherever then there are lands occupied, but not developed, there will be a growing pressure against such mere rights of occupation. More and more it will be seen that only effective use will justify the claim of occupation. Moreover, it is evident that just as in the sphere of the rights of individual property important modifications are being made conditioning and controlling these rights, so in the sphere of the colonies and protectorates which nations have acquired there must enter an element of international right which has not been hitherto pressed. No nation can in these days seek to monopolize for itself large and important tracts of the world to the exclusion of other nations. We are coming to a parting of the ways in which, if there is not to be a development of equal rights for all, we shall be faced with the situation of the "haves" and the "have-nots" among the nations. These are great problems on which it is not possible to enter here, but they are mentioned for the purpose of indicating the sphere of the international polity, and of showing

how vital it is that the first steps in the foundation of that polity should be wisely and firmly laid.

We are indeed as yet only in the first stage of the developments of this greater polity. But every development in international relationships, in international law, and in public international opinion is a mark of the presence of the international state. And on its progress depends the real guarantee for peace. For it is only by the progress of constructive ideas of international right that the permanent security of national rights is to be found and that the way of peace among nations can be broadened and strengthened. As society advances in its conception and realization of international relationships, as the international polity becomes clearer to men's view, so is the hope of peace increased. With each wider and higher stage of political organization peace is secured within the new polity; and if within the polity itself war may break out, that internal survival of recourse to armed strife becomes more and more rare in the history of men. The realization of a bond of union—be it the full sovereignty of the national state, be it the single link of a customs union binding a group of national states—is a great earnest of mutual peace for the members of that state or union. There is no secure guarantee of peace short of the international polity. We need, therefore, to postulate as the foundation of international relations the idea of the international polity or international state, however imperfect even in theory this conception may be. If this is not done we fall into views based on what is a narrow, selfish, and dangerous nationalism. Every nation should be the guardian of international rights, and one of its most sacred duties should be to adjust its nationalism to these international rights. Today, the public, political mind has been awakened as never before to the gravity of these problems. The witness of the breakdown of international agreements and of the inadequacy of international sanctions has led to the asking of questions which are a necessary preliminary to the growth of a more stable and effective internationalism. For this reason in the very failure, as it may seem, of international control up to the present, there is a hope for the future of seeing more clearly what are those steps which must be taken if international control is to become real and effective. The very existence of this widespread emergence of inquiry is a political psychological factor of great importance. For

it is well to recognize from the outset that in the field of international development the part which public opinion has to play is one of the greatest significance. The problems of international right and of international control are, in their most important aspects, questions of a simple but fundamental character. They are matters not of the intricacy which diplomacy presents, but issues which, because they are so deep and fundamental, appeal straightway to the ordinary citizen. International law which has been a study of the Chancellery and the Academy, has become a question of the market-place. Not that the workman or the man of business expects or desires to master the intricacies of the questions which international lawyers and diplomatists have elaborated, but simple fundamental issues of right have been raised which awaken in all who have developed the civic sense an interest and a demand for judgment such as has not existed before. Questions of international right, because of their gravity and urgency, have become to us real and present.

There is now, therefore, an opportunity as there has never been before of making progress towards a constructive internationalism which will be the best guarantee of peace. But it will require strong and wise leadership. If the United States and England are prepared to step out boldly in the cause of international peace there is a good hope that many other states, great and small, will follow their lead. The opportunity should not be lost. The first step is to secure that as many states as possible do agree to submit their disputes one with another to inquiry and to forswear hostilities until a report on the causes of dispute has been received. Secondly, this union of states should undertake mutually to guarantee each member of the union against any third state which has recourse to hostilities before submitting its dispute to inquiry by an international court. All treaties made by states which enter such a union which are inconsistent with these conditions should be denounced or modified so as to make them compatible with the principles on which this union of states is based. Third, this union of states should uphold with all its resources, material and moral, the security of international agreements.